

### REMARKS

As a threshold matter, applicant notes the Examiner's assertion of an amendment received on October 5, 2004. Applicant's records and the Patent Application Information Retrieval (PAIR) database shows that the last amendment to have been filed August 17, 2004. Applicant requests clarification as to which amendment the Examiner is referring in referencing an October 5, 2004 communication.

Applicant has carefully reviewed and considered the Office Action mailed November 16, 2004, and the references cited therewith.

Claims 45, 47, and 48 are amended to clarify antecedent basis, and find support in the specification. No new matter is added. Claims 1-7, 19-24, 27-35, and 37-48 remain pending for examination.

### §102 Rejection of the Claims

Claims 19, 21, 22, 24, 38, 45, and 48 were rejected under 35 USC § 102(b) as being anticipated by Rasmussen et al. (4,310,036). Applicant respectfully traverses. Applicant amended claim 19 in the prior response; however the Office Action of November 16, 2004 does not acknowledge that amendment.

As noted in the prior response, Applicant cannot find in the applied reference, for example, "a secondary compression mechanism located above the primary compression mechanism and connected to the tunnel to push feed away from above the primary compression mechanism and substantially only toward an upper portion of the tunnel *cavity during operation of the primary compression mechanism*", as presently recited in claim 19 and incorporated in claims 21, 22, 24 and 38. *Rasmussen* provides a tunnel cleanout mechanism that pushes feed from the entire tunnel, rather than compressing feed in the upper tunnel so that more feed can be pushed there by the primary compression mechanism. Further, *Rasmussen* cannot operate their cleanout mechanism during operation of the primary compression mechanism, since feed would wedge behind the plate in its pushed-out position, preventing it from withdrawing, preventing feed from extruding into the bag, and defeating its purpose.

See *Rasmussen* column 4 lines 50-57, describing that during the filling operation, the cleanout plate is maintained in its retracted position abutting the topwall and backwall of the tunnel. See also *Rasmussen* column 5 lines 21-32, describing upon completion of the filling of the bag, that the cleanout plate is pivoted from the retracted position to the extended position to clean out substantially all of the silage entrapped in the tunnel. *Rasmussen* teaches away from operating his clean out mechanism during operation of the PCM. Accordingly, *Rasmussen* does not anticipate the present claimed invention.

Claims 19, 21, 22, 24, 38, 45 and 48 appear to be in condition for allowance, and Applicant respectfully requests reconsideration of the rejection and allowance of the claims.

#### §103 Rejection of the Claims

Claims 20 and 23 were rejected under 35 USC § 103(a) as being unpatentable over *Rasmussen et al.* (4,310,036) in view of *Goar* (3,881,407). Applicant cannot find in *Rasmussen* or *Goar*, for example, "a secondary compression mechanism located above the primary compression mechanism and connected to the tunnel to push feed away from above the primary compression mechanism and substantially only toward an upper portion of the tunnel cavity *during operation of the primary compression mechanism*", as presently recited in claim 19 and incorporated in claims 20 and 23. *Goar*'s compression plate 50 compresses garbage only into the lower 1/2 of the garbage box. *Rasmussen*'s cleanout plate is not for compressing feed, but rather is taught as for emptying feed from the tunnel after the bag has been filled, so that feed (e.g., 3 tons) is not left residing in the tunnel, particularly if the tunnel is being hauled along a highway (*Rasmussen* column 5 lines 15-19; column 1 lines 45-47)

Furthermore, Applicant again traverses the rejections because the applied reference does not identify a proper motivation to modify or combine *Rasmussen* with *Goar* as argued in applicant's prior amendment and response dated August 18, 2004. According to M.P.E.P. § 2143.01, the mere fact that references *can* be modified does not render the resultant combination obvious unless prior art also suggests (i.e., a prior-art supported, objective suggestion) the desirability of the modification. Pursuant to M.P.E.P. § 706.02(j), "[t]he initial burden is on the Examiner to provide some suggestion of the desirability of doing what the inventor has done." The Examiner has not met this requirement. See also *In Re San Su Lee*, 277 F.3d 1338 (Fed. Cir.

2002). Applicant respectfully submits that the evidence of record does not appear to identify an objective source for the motivation to combine *Rasmussen* and *Goar* in the manner proposed. The Examiner has not stated how *Rasmussen* or *Goar* establishes that it would be in need of, for example, a secondary compression mechanism located above the primary compression mechanism and connected to the tunnel to push feed away from above the primary compression mechanism and substantially only toward an upper portion of the tunnel cavity during operation of the primary compression mechanism as recited in claim 19 and incorporated in claim 20 and 23. Applicant cannot find any suggestion in *Rasmussen* to employ such a component. Applicant respectfully requests the Examiner identify an objective source for the motivation to modify the applied reference in the manner proposed. Alternatively, it appears, the requisite motivation for modifying *Rasmussen* with *Goar* is lacking, and therefore, proper *prima facie* obviousness has not been established.

Moreover, Applicant again traverses the apparent Official Notice taken in the Office Action mailed May, 14, 2004 at page 4, section 8, last paragraph. Pursuant to M.P.E.P. § 2144.03, Applicant previously respectfully requests a reference showing a secondary compression mechanism located on the exterior of the feed tunnel and extending into the feed tunnel *above the primary compression mechanism*, as recited in claim 20. *Goar* does not provide this. Accordingly, pursuant to MPEP § 2144.03 Applicant respectfully repeats his request for the Examiner to provide a reference in support of the assertion of obviousness.

Further, Applicant also requests a reference showing a hinged apparatus that protrudes outward of the feed tunnel wall at the non-compacting stage and extending inward into the feed tunnel at the compacting stage *above the primary compression mechanism*, as recited in claim 23. *Goar* also does not provide this. Thus, pursuant to MPEP § 2144.03 Applicant respectfully repeats his request for the Examiner to provide a reference in support of the assertion of obviousness.

Alternatively, Applicant submits the assertions made are unsupported by the reference and therefore are within the personal knowledge of the Examiner. Applicant requests an affidavit supporting the unsupported assertions as required by 37 CFR 1.104(d)(2), or removal of the unsupported assertions.

Accordingly, claims 20 and 23 appear to be in condition for allowance, and Applicant respectfully requests reconsideration of the rejection and allowance of the claims.

Claim 39 was rejected under 35 USC § 103(a) as being unpatentable over Rasmussen et al. (4,310,036). As stated above, Applicant cannot find in the applied reference, for example, a secondary compression mechanism located above the primary compression mechanism and connected to the tunnel to push feed away from above the primary compression mechanism and *substantially only toward an upper portion of the tunnel cavity* during operation of the primary compression mechanism, as presently recited in claim 19 and incorporated in claim 39.

Accordingly, claim 39 appears to be in condition for allowance, and reconsideration and Applicant respectfully requests reconsideration of the rejection and allowance of the claims.

Claims 1-3 and 40 were rejected under 35 USC § 103(a) as being unpatentable over Rasmussen et al. (4,310,036) in view of Goth (6,379,086). Applicant respectfully traverses. Goth has a motor and arms attached to the flat horizontal bottom of a tank. The tank has outwardly sloping walls that do not have any motors or arms. Applicant cannot find in Rasmussen or Goth, for example, a secondary compression mechanism located above the primary compression mechanism and connected to the tunnel to push feed away from above the primary compression mechanism and *substantially only toward an upper portion of the tunnel cavity* during operation of the primary compression mechanism, as presently recited in claim 19 and incorporated in claims 1-3 and 40. In fact, claim 1 recites "first motor coupled to the sloping wall of the input hopper; and a first distribution mechanism driven by the first motor and located inside the hopper."

Accordingly, claims 1-3 and 40 appear to be in condition for allowance, and Applicant respectfully requests reconsideration of the rejection and allowance of the claims.

Claim 4 was rejected under 35 USC § 103(a) as being unpatentable over Rasmussen et al. (4,310,036) in view of Goth (6,379,086). Applicant respectfully traverses. As stated above, Applicant cannot find in Rasmussen or Goth, for example, a secondary compression mechanism located above the primary compression mechanism and connected to the tunnel to push feed

away from above the primary compression mechanism and *substantially only toward an upper portion of the tunnel cavity* during operation of the primary compression mechanism, as presently recited in claim 19 and incorporated in claim 4.

Accordingly, claim 4 appears to be in condition for allowance, and reconsideration and Applicant respectfully requests reconsideration of the rejection and allowance of the claims.

Claims 27-32, 34, 35, 37, 41, and 48 were rejected under 35 USC § 103(a) as being unpatentable over Rasmussen et al. (4,310,036) in view of Bahlmann (DE 3619251). Applicant respectfully traverses. Bahlmann's entire tunnel is in the upper portion of that machine. Bahlmann's mechanism does not compress the feed in the upper portion only of the tunnel, because feed of the entire tunnel is compressed by rake 5. Bahlmann does not fill a bag, but rather compresses silage blocks 36 that are ejected out back door 39 once large enough. There is no motivation to replace the cleanout mechanism of Rasmussen, since that mechanism is for cleaning out the tunnel, and operated only after the primary mechanism is stopped, in order to clean out its tunnel after completion of filling of the bag. If Rasmussen continued to operate its primary compression mechanism, it would add feed back into the tunnel after the bag filling completed. There is no use in having the tunnel of Rasmussen filled during an operation that cleans out the tunnel. Any other motivation to combine would change the operating principles of Rasmussen and would impermissibly come from the teaching of the present invention. Thus claims 27-32, 34, 35, 37, and 41 appear in condition for allowance, and Applicant respectfully requests reconsideration of the rejection and allowance of the claims.

Claims 42 was rejected under 35 USC § 103(a) as being unpatentable over Rasmussen et al. (4,310,036) in view of Bahlmann (DE 3619251) also. Applicant respectfully traverses. The proffered motivation that workable or optimum ranges involves only routine skill in the art does not apply to Rasmussen, where, in the words of the Examiner, "the result desired" is the bag is filled (a process that is typically measured in hours) and the tunnel is emptied only once at the end of the process (see the discussion of Rasmussen above). The notion of operating the pistons once every nine or ten seconds is totally unworkable. Further, the Examiner has provided no evidence whatsoever that any prior art recognized any preferred, optimal, or workable range of

**AMENDMENT & RESPONSE UNDER 37 C.F.R. 1.114**

Serial Number: 09/977,036

Reply to Office Action of November 16, 2004

Filing Date: October 11, 2001

Title: AGRICULTURAL BAGGER WITH UPPER TUNNEL COMPACTION AND CHUTE AGITATION

Page 15

Dkt: 671.003US1

providing timing of additional compression in the upper portion of the tunnel. Accordingly, claim 42 appears in condition for allowance, and Applicant respectfully requests reconsideration of the rejection and allowance of the claims.

*Allowed Claims*

The Examiner acknowledged that claims 5, 6, 7, 33, 40, 44 and 47 are allowed.

**AMENDMENT & RESPONSE UNDER 37 C.F.R. 1.114**

Serial Number: 09/977,036

Reply to Office Action of November 16, 2004

Filing Date: October 11, 2001

Title: AGRICULTURAL BAGGER WITH UPPER TUNNEL COMPACTION AND CHUTE AGITATION

Page 16

Dkt: 671.003US1

Conclusion

Applicant respectfully submits that pending 1-7, 19-24, 27-35, and 37-48 are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (952) 278-3501 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 502931.

Respectfully submitted,

PAUL R. WINGERT

By his Representatives,

LEMAIRE PATENT LAW FIRM, PLLC  
P.O. Box 11358  
ST. PAUL, MN 55111  
TELEPHONE: (952) 278-3501

Date

18 April 2005

By

Charles A. Lemaire

Charles A. Lemaire

Reg. No. 36,198

"Express Mail" mailing label number: EV 584 016 831 US

Date of Deposit: April 18, 2005

This correspondence is being deposited on the date indicated above with the United States Postal Service pursuant to 37 CFR 1.10, and is addressed to: Mail Stop RCE, Commissioner for Patents, P.O.Box 1450, Alexandria, VA 22313-1450